



Department of the Army

ACQUISITION ETHICS TRAINING

**Office of General Counsel
(Ethics & Fiscal)**

&

**Office of the Assistant Secretary of the Army
(Acquisition, Logistics and Technology)**

**Army Pentagon
Washington, D.C. 20301**

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Why This Ethics Training?

This year, Secretary of the Army Francis J. Harvey personally directed the development of special training on this topic for the Army acquisition workforce to maintain the confidence and support of the American people. The last decade has seen remarkable change, not only in the way Army competes and awards contracts, but also a fundamental change in the role contractors play in supporting the Army's mission. A widely-held, but inaccurate, view is that contractors are no longer outsiders with whom we deal at arms length. Instead, acquisition reform has encouraged the view that contractors are partners – the one team concept. Although contractors play a key role, they have different loyalties than those of Federal employees. So, there remain fundamental differences between the Government and the contractor, and very definite legal and ethical limitations on the degree to which we may act as “partners.” Recent, highly-visible ethics investigations suggest that some government officials may have lost sight of the line that divides Government from contractor, and ethical from unethical.

Our Goal for this Training

The purpose of this training is to re-establish those lines. In many cases, the ethics rules governing your relations with contractor personnel are different from the rules governing your relations with your fellow Government employees. The goal of this training is to enhance your awareness of the differences in these rules. If you have questions on how the restrictions may apply to your particular situation, please contact your ethics counselor in advance of any action. It is much easier and safer for you to get advice ahead of time than it is to try to undo inappropriate actions. Such actions can involve career-ending mistakes, or the possibility of suffering administrative, civil, or even criminal penalties.

What Topics Will We Cover?

- ☛ Procurement Integrity Act
- ☛ Applicable Laws and Regulations
- ☛ Gifts from Prohibited Sources (i.e., Contractors)
- ☛ Allowing Time Off
- ☛ Traveling with Contractors
- ☛ Recommendations for Contractor Personnel
- ☛ Awards for Contractor Personnel
- ☛ Organizational Conflicts of Interest
- ☛ Seeking Employment
- ☛ Post-Government Employment Restrictions
- ☛ Ethical Decision Making
- ☛ Practice Tips in Dealing with Contractors
- ☛ Code of Ethics

Procurement Integrity



[Reference: 41 U.S.C. 423, FAR 3.104, DFARS Part 203, AFARS Part 5103]

Overview

This section discusses the requirements of the Procurement Integrity Act and its impact on Federal employees.

Background

The Department of the Army (DA), like most Federal agencies, purchases many products and services from the private sector.

To preserve the integrity of the Federal procurement process and assure fair treatment of bidders, offerors and contractors, laws govern the procurement process and the manner in which Federal and offeror personnel conduct business with each other. One of these statutes is Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), often referred to as the Procurement Integrity Act. This Act prohibits certain activities by personnel involved in the procurement process. The Federal Acquisition Regulation, at Section 3.104, sets forth the regulations that implement the provisions of the Procurement Integrity Act.

Guiding Principles

The Procurement Integrity Act prohibits certain activities by personnel involved in the procurement process.

Procurement integrity statutes and regulations govern the procurement process and the manner in which government and contractor personnel conduct business with each other.

- **The Procurement Integrity Act addresses various activities by:**
 - ☞ Current Federal employees.
 - ☞ Certain former Federal employees.
 - ☞ Bidders and Offerors.
 - ☞ Other personnel involved in agency procurements and contracts.

- **Significant revisions to the Procurement Integrity Act were effective on January 1, 1997. The Procurement Integrity Act reflects procurement activities in four major areas:**
 - ☞ Disclosing bid, proposal or source selection information.
 - ☞ Obtaining bid, proposal or source selection information.
 - ☞ Accepting compensation from certain contractors after leaving the Government.
 - ☞ Discussing non-Federal employment with certain bidders or offerors.

- **This pamphlet is intended to act as a primer for all DA employees on issues related to procurement integrity. As such, not all statutory or regulatory details are included here. Employees should consult their ethics counselor or procurement attorney to discuss detailed information and procedures in those areas that may affect them personally in procurements:**
 - ☞ Avoiding making Government decisions without authority;
 - ☞ Inappropriate disclosure of information at any point in the acquisition process.
 - ☞ Maintaining inappropriate financial interests;
 - ☞ Discussing non-Federal employment with bidders or offerors;
 - ☞ Accepting compensation from certain contractors after leaving the Government

☐ **Key Provisions Of The Procurement Integrity Act.**

■ **Disclosing Procurement Information**

For competitive procurements, the personnel identified below shall not, unless permitted by law, knowingly disclose proposal or bid information or source selection information, before the award of a contract to which the information relates.

- ☞ A current or former official of the United States;
- ☞ A person who is acting for, or has acted for on behalf of, the United States with respect to a Federal agency procurement,
- ☞ A person who is advising, or has advised, the United States with respect to a Federal agency procurement.

The following information is procurement sensitive and may not be disclosed if it has not previously been made public:

Proposal or bid information, including:

- ☞ Cost or pricing data, including indirect costs and direct labor rates,
- ☞ Proprietary information about manufacturing process, operations, or techniques identified as such by any contractor;
- ☞ Information identified by any contractor as "contractor bid or proposal information."

Source selection information, which is information that is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal, including:

- ☞ Bid prices.
- ☞ Proposed costs or prices.
- ☞ Source selection plans.
- ☞ Technical evaluation plans.
- ☞ Technical and cost or price evaluation proposals.

- ☞ Competitive range determinations.
- ☞ Rankings of bids, proposals, or competitors.
- ☞ Reports and evaluations of source selection panels, boards, or advisory councils.
- ☞ Other "source selection information."
- ☞

■ **Obtaining Procurement Information**

For competitive procurements, a person shall not, unless permitted by law, knowingly obtain bid or proposal information or source selection information, before the award of a contract to which the information relates. This prohibition applies to the same type of proposal or bid information or source selection information identified above.

■ **Discussing Employment With Contractors**

If you are a DA employee who is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold currently \$100,000, and you contact or are contacted by a bidder or offeror in that procurement regarding possible non-Federal employment, you are required to:

- ☞ Promptly report the contact in writing to your supervisor and your agency ethics official, **and**
- ☞ Either reject the possibility of non-Federal employment or disqualify yourself in writing from further involvement in that procurement, until authorized to resume participation.

■ **Accepting Compensation From a Contractor**

A former DA employee may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor for a period of one year from the date that the former DA employee:

- ☞ Served, at the time of selection of the contractor or the award of the contract, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team. This applies to contracts over \$10,000,000.
- ☞ Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000.

☞ Personally made any of the following decisions on behalf of the Federal agency:

☞

- ☞ To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10,000,000.
- ☞ To establish overhead or other rates for a contractor on a contract or contracts valued in excess of \$10,000,000.
- ☞ To approve a contract payment or payments over \$10,000,000.
- ☞ To pay or settle a claim in excess of \$10,000,000.

This post-employment prohibition does not apply to divisions or affiliates of a contractor that do not produce the same or similar products or services as the entity of the contractor referred to above.

☐ **Program Managers**

For purposes of the prohibition described above, a Program Manager (PM) is the designated DA individual responsible for and has authority to accomplish program objectives for development, production, and sustainment to meet the user's operational needs. The PM shall be accountable for credible cost, schedule, and performance reporting to the Milestone Decision Authority.

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What are the Penalties for Violations?

The following **Criminal Penalties** apply to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information:

- ☞ Imprisonment of not more than 5 years and/or a fine.



The following **Civil Penalties** apply to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information, (3) discussing non-Federal employment with contractors, or (4) accepting compensation from contractors:



- ☞ Each knowing violation of any of the four key provisions of the Procurement Integrity Act may result in civil penalties up to \$50,000 per violation and administration actions.
- ☞ Up to \$50,000 per violation plus twice the amount of compensation an individual received or offered for the prohibited conduct.

- ☞ Up to \$500,000 per violation plus twice the amount of compensation an organization received or offered for the prohibited conduct.

The following **Administrative Actions** apply to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information, (3) discussing non-Federal employment with contractors, or (4) accepting compensation from contractors:

- ☞ Cancellation of the procurement.
- ☞ Disqualification of an offeror.
- ☞ Rescission of the contract.
- ☞ Suspension or debarment of the contractor.
- ☞ Initiation of an adverse personnel action.
- ☞ Any other action in the best interest of the Government.

☐ **Release of Information**

- ☞ The FAR places restrictions on the release of information related to procurements and other contractor information that must be protected {e.g., FAR Part 14 states that information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices, or long-range acquisition estimates, or synopses. Within the Government, such information shall be restricted to those having a legitimate interest. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another. FAR Part 15 states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements. Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.}
- ☞ Other laws may prohibit release of information both before and after award.
- ☞ Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited.

☐ **Contracting Officer Representative**

Responsibilities of the COR vary with the type of contract and complexity of the acquisition. Each contract must be treated on an individual basis, because it may place responsibilities on the COR unique to that contract. Normally, a COR has the responsibility/authority to monitor all aspects of the day-to-day administration of a contract except issues that deal with "time and money". Formally said, a COR does not have the authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract. Specifically, they can not do any of the following: make any agreement with the contractor requiring the obligation of public funds (they can not sign any contract, including delivery orders, purchase orders, or modify a contract, or in any way obligate payment of funds by the Government); encourage the contractor by words, actions, or a failure to act to undertake new work or an extension of existing work beyond the contract period; interfere with the contractor's management prerogative by "supervising" contractor employees or otherwise directing their work efforts; authorize a contractor to obtain property for use under a contract; allow government property accountable under one contract to be used in the performance of another contract; issue instructions to the contractor to start or stop work; order or accept goods or services not expressly required by the contract; and discuss acquisition plans or provide any advance information that might give one contractor an advantage over another contractor in forthcoming procurements.

☐ **Government Purchase Card**

Cardholders should be familiar with the Army's Standard Operating Procedure, which may be found at <https://webportal.saalt.army.mil/>, under Army Purchasecard.

Intentional use of the Purchase Card for other than official Government business may be considered an attempt to commit fraud against the U.S. Government. Misuse may result in immediate cancellation of an individual's card, pecuniary liability, and negative administrative and/or disciplinary action against the cardholder and, if warranted, against the billing official. Cardholders will be held personally liable to the Government for any non-Government transactions. Additionally, misuse of the purchase cards may result in criminal penalties, to include a fine of not more than \$10,000 or imprisonment for not more than five years or both.

Going Beyond the Procurement Integrity Act

☐ Applicable Law And Regulations.



In addition to the Procurement Integrity Act requirements, all Federal employees should also be familiar with other statutes and regulations that set forth the standards of conduct for all Federal employees, including those involved in procurements. In August 1992, the Office of Government Ethics (OGE) issued the Standards of Ethical Conduct for Executive Branch Employees, found at Title 5, Code Of Federal Regulations, Part 2634. Built on 14 basic principles, the standards set forth rules regarding gifts between employees and the acceptance of gifts from sources outside the executive branch agency, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and engaging in outside activities. The Department of Defense issued the Joint Ethics Regulation (JER), DoD 5500.7-R, applicable throughout DoD including Department of the Army (DA) employees. The JER supplements the OGE Standards of Ethical Conduct for DoD and DA. The Office of the General Counsel for Ethics & Fiscal Law at Headquarters, or the local ethics counselor, can provide further information addressing standards of conduct, including information on:

- ☞ Avoiding personal conflicts of interest;
- ☞ Taking bribes on accepting certain gratuities;
- ☞ Using an official Government position to advance personal interest;
- ☞ Maintaining inappropriate financial interests;
- ☞ Accepting gifts from contractors;
- ☞ Improper endorsement of contractors;
- ☞ Logistical support to non-Federal entities;
- ☞ Seeking non-Federal employment with bidders or offerors;
- ☞ Accepting compensation from certain contractors after leaving the Government.

If you're unsure what you're about to do is appropriate, ask your ethics counselor. An ethics counselor will advise you on how to accomplish your goals without violating the standards of conduct. In fact, disciplinary action for violating the standards of conduct will not be taken against you *if* you act in good faith reliance upon the advice of your ethics counselor *and* if you have made full disclosure of the relevant circumstances. Again, if you are unsure of your actions, call your ethics counselor before you act.

Related Prohibited Conduct

☐ Gifts from Prohibited Sources (i.e., Contractors)

Giving gifts in an office environment is one area that raises questions. Army personnel cannot solicit, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from a Government contractor. So, when the hat is passed around for the departure gift, do not solicit the contractor for contributions. Additionally, Army employees are generally prohibited from accepting a gift from a prohibited source or a gift that is given because of the employee's official position. A prohibited source is any person or entity that is seeking an official action by the Army or DoD; doing or seeking business with the Army or DoD; regulated by the Army or DoD; substantially affected by the Army or DoD; or whose members, the majority of which, fall into one or more of these categories.

- ☞ DA employees are prohibited from accepting gifts offered because of their official positions or gifts offered by a prohibited source.

- ☞ There are four steps to determine whether a gift may be accepted:

(1) Is the item a gift? The following are examples of items considered to be "non-gifts":

- ☞ Items with little intrinsic value intended solely for presentation, benefits offered to all Modest items of food and refreshments (like coffee and donuts) when not served as a meal.
- ☞ Prizes in contests open to the public.
- ☞ Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, intended only for presentation.
- ☞ Commercial discounts available to the public or to all Government civilian or military personnel.
- ☞ Anything the Government acquires by contract or otherwise legally accepts.
- ☞ Anything for which you pay market value.

(2) Is the gift offered because of your official position or offered from a prohibited source?

(3) Does an exception apply? The following are the most common exceptions to the gifts rule.

- ☞ **Gifts of \$20 or Less.** Unsolicited gifts with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50. Does not apply to gifts of cash or investment interests (e.g., stocks or bonds). Employee may decline gifts to keep aggregate value at \$20 or less, but may not pay differential over \$20 to retain gift(s);
- ☞ **Gifts Based on a Personal Relationship.** Gifts based on a personal relationship, such as a family relationship or personal friendship rather than the position of the employee. Relevant factors to consider in making the determination include history of the relationship and whether family member or friend personally pays for the gift.
- ☞ **Commercial discounts available to the general public or to all Government or military personnel.** Would not apply to discounts to subgroups based on rank, position or organization.
- ☞ **Paying fair market value.** For tickets, that is the face value of the ticket.

(4) Would using the exception undermine Government integrity?

- ☞ **Appearance concerns.** If a gift falls within one of the exceptions, acceptance of the gift will not violate any of the basic obligations of public service found in the Standards of Ethical Conduct for Executive Branch Employees. It is never inappropriate and frequently prudent, however, to decline a gift offered by a prohibited source or given because of one's position.

Notwithstanding any exception, an employee may not:

- ☞ Use his official position to solicit or coerce the offering of a gift;
- ☞ Accept a gift in exchange for being influenced in the performance of official action (bribe or illegal gratuity);
- ☞ Accept gifts from the same or different sources so frequently that a reasonable person would conclude that the employee is using his public office for private gain.

☞ **Handling Improper Gifts from Outside Sources** (5 C.F.R. § 2635.205). When an employee cannot accept a gift, the employee should:

- ☞ Refuse the gift (if possible) and diplomatically explain the restrictions on acceptance of gifts by Federal employees.
- ☞ Return the gift (tangible items) or pay the donor its fair market value.
- ☞ Perishable items may be donated to charity, shared within the office, or destroyed with the approval of the supervisor or ethics counselor.

☞ **Reporting Gifts from Outside Sources**. Employees, who file financial disclosure reports, must report travel-related cash reimbursements or other gifts totaling more than \$305 from any one source received by the employee, spouse, or dependent children during the reporting period on: OGE Form 450 (Confidential Financial Disclosure Report), Part V: Gifts and Travel Reimbursements; SF 278 (Public Financial Disclosure Report), Schedule B, Part II.

REMEMBER: Reciprocity is NOT a solution!!!!!!

☐ **Allowing Time Off**

- One of the primary issues regarding contractors in the workplace is time-off. Often these questions arise in the context of the office party. Although the office party is a well-established tradition for Federal employees, but the inclusion of contractor employees, who are not Federal employees, adds some new considerations. The number of contractor employees that support the Army has increased dramatically and accordingly it is necessary to consider how their involvement may impact some activities. Many contractors have ethics rules or business practices that are similar to the Federal rules. This should be considered before offering contractor employees holiday invitations that they may be unable to accept.

- If your office is planning an office party that will take place during the non-duty lunch hour or after work, contractor employees may be invited. The contractor employees may bring food to share or make a fair share contribution of money to cover the cost of refreshments because these contributions fall outside the definition of gifts. The contractor employees' attendance and contributions, however, must be voluntary, so solicitation of contributions must be done with care.
- If the office party is during duty hours, it is *impermissible* for the government to reimburse a contractor for its employees' morale and welfare expenses that such a party represents. Accordingly, the contractor must decide whether to let its employees attend or insist they continue to work. If the employees are allowed to attend the party, the contractor must decide whether the contractor will pay them for that time. Before inviting contractor employees to a party during duty hours, coordinate with the contracting officer and the ethics counselor.

☐ **Traveling with Contractors**

There are a number of different situations that may arise in this area. General rule: A Soldier or Army civilian employee conducting official travel is prohibited from accepting a ride with contractor personnel, unless there is legal authority permitting it. See your ethics counselor to determine if accepting a ride is permissible. If the ride is for unofficial or personal travel, the gift rules are applicable. So, it would be impermissible to accept a ride unless there is a gift exception or you pay the fair market value.

☐ **Recommendations for Contractor Personnel**

Generally, it is impermissible to provide preferential treatment to any person or entity. Providing a recommendation to an employee of a contractor may be viewed as preferential treatment. Also, such recommendations may be misused by contractor personnel to demonstrate that the contractor is performing well on a contract, when, in fact, contract performance is deficient. Contact the contracting officer or your ethics counselor for further advice.

☐ **Awards for Contractor Personnel**

Awards for contractor personnel are generally prohibited, unless there is a statutory basis for providing an award. Although honorary awards may be granted to private citizens, groups, or organizations that significantly assist or support DoD functions, services, or operations, persons or organizations having a commercial or profit-making relationship with DoD *shall not* be granted recognition. DoD 1400.25-M, Subchapter 451. Additionally, DA Memo 600-70, para. 5d(2), provides the following: "Coins purchased with appropriated

funds shall not be presented to contractor personnel.”

☐ **Organizational Conflict of Interests**

An "organizational conflict of interest" exists when a contractor is or may be unable or unwilling to provide the government with impartial or objective assistance or advice. An organizational conflict of interest may result when factors create an actual or potential conflict of interest on a current contract or a potential future procurement. Generally, if a contractor knows the cost, knows the work, *No* contract.

☐ **Seeking Employment**

- Contacts with an offeror during the conduct of an acquisition may constitute "seeking employment." Government officers and employees are prohibited, and must disqualify themselves, from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment.
- The Procurement Integrity Act requires that a Government employees who serve as procurement officials as defined in 41 U.S.C. Code 423(b) are subject to certain restrictions. If a Federal employee, who is participating personally and substantially in a procurement, contacts or is contacted by a bidder or offeror in that procurement regarding possible employment, the employee must:
 - ☞ Promptly report the contact in writing to the employee's supervisor and to the designated agency ethics official (or designee), AND
 - ☞ Either: (a) Reject the possibility of employment, OR (b) Disqualify himself or herself from further personal and substantial participation in the procurement until the agency has authorized the employee to resume participation in the procurement on the grounds that: (1) the company that the employment contact was with is no longer a bidder or offeror in the procurement, or (2) all discussions between the employee and the company regarding possible employment have terminated without an agreement for employment.
- This rule applies only to contracts in excess of the simplified acquisition threshold (\$100,000).

☐ **Post-Government Employment Restrictions**

Post-employment restrictions prohibit certain activities by former Government employees. The following are most common restrictions.

- **Lifetime representation ban.** All Federal employees, to include military officers, who participated personally and substantially in a particular Government matter (e.g., contract, claim, sale of asset), are prohibited for life from representing a contractor (or any other third party) before their former agency or any other Federal

agency, in connection with that matter. (18 U.S.C. 207(a)(1)) Behind-the-scenes assistance to the contractor (or other party) is permitted.

- **2-year representation ban.** Employees who had a contract or other particular matter under their official responsibility during their last year in the Government are prohibited, for two years, from representing a contractor (or any other third party) before their former agency or any other Federal agency, in connection with that matter. (18 U.S.C. 207(a)(2)) Again, behind-the-scenes assistance is permitted.
- **Sharing in profits.** Senior appointees who work for a firm representing clients before either the executive branch or any court where the United States has an interest, are prohibited from sharing in profits earned by the firm for those matters (Title 18, United States Code, Section 203 (18 U.S.C. 203)).
- **1-year no contact rule.** Senior officials are restricted for one year after leaving Government service from trying to influence their former agency (i.e., Army) by making, any communication to, or appearance before, any employee of their former agency, with the intent to influence that employee, on behalf of any third person, in connection with any matter on which the third person seeks official action by their former agency. (18 U.S.C. 207(c)) This ban includes people serving at Levels II-V of the Executive Schedule, those paid above the rate for level 4 of the SES, and military officers above O-6.

In addition to the above restrictions, remember the one year compensation ban imposed on certain procurement officials by the Procurement Integrity Act.

☐ **ETHICAL DECISION-MAKING**

- **General.** Virtually everyone in Federal Government service makes job-related decisions. Some of these decisions may seem more important than others, but all should be preceded by a consideration of ethical ramifications. In some cases, the ethical element of decision-making will go no further than to consciously acknowledge that there are no significant ethical ramifications to consider. In other cases, in-depth ethical analysis is called for in addition to application of ethics rules. The following plan for decision-making ensures careful review of ethical consequences when there are alternative solutions that seem proper under existing laws and regulations. DoD employees should consider incorporating the following plan in official decision-making.
- **Ethical Decision-Making Plan**
 1. **Define the Problem.** Proceed from a general statement of the problem to specific statements of the decisions to be made. As you take the following steps, such as identifying goals and naming stakeholders, new problems or

needed decisions may become apparent. Be willing to add these to your problem list as you go.

2. Identify the Goal(s). Proceed from a general statement of an end result both long term and short term. Be prepared to add to this list as you take the following steps. Goals are something to strive toward. They are statements of the best possible results. The very best is not always achieved for everyone. Many problems do not allow for "win/win" outcomes. Be prepared to fall somewhat short of some goals for the sake of ethics and other considerations.
3. List Applicable Laws or Regulations. Laws and regulations are basic constraints within which official decisions are made. Until all relevant laws and regulations are considered, ethical decision-making is impossible.
4. List the Ethical Values at Stake. Listing the ethical values at stake can awaken you to problems and goals that you may not have otherwise considered. It may alert you to stakeholders you may not have recognized. Listing the values reminds you of your commitment to them at a time when the stress of the problem may cause you to forget. See the Code of Ethical Conduct for the 14 principles or values, which form the basis for ethical conduct.
5. Name All the Stakeholders. A stakeholder is anyone who is likely to be affected by a decision. Many stakeholders will be apparent because of the previous steps you already followed. More will occur to you as you give the matter a few minutes of thought. Do not forget to include yourself and the people who may depend on you for support. As you list the stakeholders, try to note the way your decision could affect them. In other words, name what is at stake for the stakeholder.
6. Gather Additional Information. This step is frequently overlooked. The stress from the problem urges speedy solutions. Hasty decisions, however, usually create problems of their own. Take the time to gather all necessary information. Ask questions, demand proof when appropriate, check your assumptions.
7. State All Feasible Solutions. By this time, some feasible solutions will have presented themselves. Others may be found by sharing the lists and information you have pulled together and "brain storming." As you state the feasible solutions, note which stakeholders could be affected and what might be gained or lost.
8. Eliminate Unethical Options. There may be solutions that seem to resolve the problem and reach the goal but which are clearly unethical. Remember

that short term solutions are not worth sacrificing our commitment to ethics. The long term problems of unethical solutions will not be worth the short term advantages. Eliminate the unethical solutions.

9. Rank Remaining Solutions. Other solutions may not be clearly unethical but may be questionable. You may have to rely on intuition or "gut feelings" to weed out these solutions. Put these possible solutions at the bottom of your list. Rank the remaining solutions, which are all ethical ones, in order of how close they bring you to your goal and solve the problem.
10. Commit To and Implement the Best Ethical Solution. Commitment and implementation are vital to the ethical decision-making process. Determining which solution is the best ethical one is a meaningless exercise unless implementation of the ethical solution follows. If the right decision is not implemented, the door is left wide open for others to implement unethical solutions.

PRINCIPLES OF ETHICAL CONDUCT

1. Public Service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.

3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

4. An employee shall not, except as [provided for by regulation], solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

5. Employees shall put forth honest effort in the performance of their duties.

6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

7. Employees shall not use public office for private gain.

8. Employees shall act impartially and not give preferential treatment to any private organization or individual.

9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

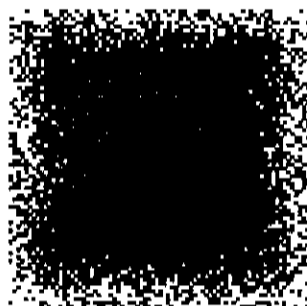
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Practice Tips



The following are practice tips regarding discussions with contractor representatives.

- ☛ ***PRACTICE TIP 1: Preserve competitiveness; maintain a level playing field.*** Be sensitive to whether a meeting, action, or release of information would give a competitive advantage to a contractor. All similarly situated contractors should receive equal treatment. When you meet with a contractor, assume that you are speaking to the entire DoD contractor community. *If there has been a significant exchange of information in a meeting with a contractor, you may wish to distribute publicly available information to the community of interested DoD contractors.*
- ☛ ***PRACTICE TIP 2: Setting an Agenda.*** After agreeing to meet with a contractor, the contractor should identify the name of the firm, the topic for discussion, and any current contracts, competitions, or active proposals that the company has pending with the Army.
- ☛ ***PRACTICE TIP 3: Primary Purpose of Meetings is to Receive Information.*** While it is all right to ask informational and clarifying questions during a briefing, you should avoid asking contractors to send follow-up information. The meeting should not be the basis for further action, and should not unintentionally solicit formal proposals.
- ☛ ***PRACTICE TIP 4: Unauthorized commitments.*** Only a warranted contracting officer can bind the government. Do not make unauthorized commitments, promises purporting to bind the government, or representations that would compromise the Government's position. For the same reason, do not offer assistance or advice. Contractors may interpret suggestions as requests to take action, resulting in a claim against the Army.

- ☞ ***PRACTICE TIP 5: Impartiality.*** Do not give preferential treatment to any private party. Accordingly, do not give VIP visitor treatment to contractor representatives who visit in that capacity or who intend to discuss contractor business; *i.e.*, no government vehicle rides from the airport, no all-day escort, no officially-hosted free dining.

PRACTICE TIP 6: "Inside" Information. Do not release "inside" information that is not otherwise available to the public (or to a relevant community of DoD contractors). This includes:

- ☞ Information not available to the public under the Freedom of Information Act;
 - ☞ Information protected under the Privacy Act, Trade Secrets, and classified material;
 - ☞ Selective release of advance procurement information, Army requirements, or premature release of contract award decisions; and,
 - ☞ Acquisition information, such as, unopened bids, proposed costs, the Army's estimate of costs, source selection plans, price evaluations, competitive range determinations, ranking of bids, proprietary information (such as labor rates), reports of Source Selection Evaluation Boards, and other information marked: "SOURCE SELECTION INFORMATION."
- ☞ ***PRACTICE TIP 7: Avoid private discussions about the contractor's business and its relationship with the Army. Your staff members should sit in on discussions.***
- ☞ ***PRACTICE TIP 8: Gifts.*** Small gifts are occasionally offered in meetings with contractors. Food and refreshments that are not a meal (*e.g.*, coffee and donuts) may be accepted. You may also accept presentation items, such as commemorative coins, or items worth less than \$20. Consult your legal advisor when something other than a nominal gift is offered. Gifts which may not be retained personally will usually become Army property.
- ☞ ***PRACTICE TIP 9: Restricted Contacts with Former DoD Officials and Retired Military Officers.***
- ☞ Former senior DoD civilian employees (SES level V and above) and retired general officers are prohibited from attempting to influence official actions in their former department or agency for one year after their departure. (This is the one-year "cooling off" restriction.) ***18 USC 207(c)***

- ☛ Former officers and employees are forever prohibited from representing someone in a particular matter that involved non-Federal parties, and in which they were personally and substantially involved while working for the Government. *18 USC 207(a)(1)*
- ☛ Federal officials who had authority to award contracts, make payments, set overhead rates, and settle claims of more than \$10 million are prohibited for a period of one year after the official action, from working for the contractor who received the payment. *41 USC 423*
- ☛ ***PRACTICE TIP 10:*** *Decline meetings with competing contractors once a solicitation has been released, and avoid discussing or responding to questions on matters that are being litigated. In these situations, there is a danger of inadvertently making improper disclosures.*
- ☛ ***CONCLUSION:*** Within the limits of these restrictions, you may discuss matters of mutual interest with DoD contractors. They may present capability briefings and discuss technological developments. Do not hesitate to request the assistance of your ethics counselor.